

1 THE HONORABLE THOMAS S. ZILLY

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8 UNITED STATES DISTRICT COURT
9 FOR THE WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 LUIS A. CAMEJO-RODRIGUEZ,

12 Plaintiff,

No. C08-1611Z

13 vs.

ORDER

14 DEPARTMENT OF CORRECTIONS, et al.,

15 Defendants.
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18 THIS MATTER comes before the Court on Plaintiff's objections (docket nos.
19 43, 44, 45, 46 & 47), to the Report and Recommendation ("R&R") of United States
20 Magistrate Judge Brian A. Tsuchida (docket no. 42). After the R&R was issued,
21 Plaintiff filed four affidavits (docket nos. 43, 44, 45 & 47) and an emergency motion
22 (docket no. 46). Although two of the affidavits (docket nos. 43 & 44) were filed
23 before Plaintiff would have received the R&R, the Court will treat all four affidavits
24 and the emergency motion as objections to the R&R. Having reviewed Plaintiff's
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1 complaint and amended complaint, the R&R, and the remaining record, the Court does
2 hereby FIND and ORDER:

3 (1) The Court ADOPTS IN PART and MODIFIES IN PART the R&R.
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5 The Court adopts the portions of Magistrate Judge Tsuchida's R&R that recite
6 the facts and procedural history and that discuss the amended complaint, emergency
7 motions, and motion for court-appointed counsel. The Court notes that Plaintiff
8 renewed his request for bilingual counsel in his objections. The Court finds that the
9 R&R has already adequately addressed Plaintiff's request. The Court concludes that,
10 with the exception of one new incident raised in Plaintiff's objections and described
11 below, Plaintiff's objections are cumulative of Plaintiff's complaint (docket no. 15),
12 amended complaint (docket no. 32), and emergency motions (docket nos. 37 & 39),
13 and do not present any new evidence that might affect the Court's assessment of the
14 amended complaint. With respect to the incident dated April 22, 2006, and discussed
15 in the R&R, Plaintiff conceded in his objections that he cannot identify the staff
16 member responsible. See Objections at 1 (docket no. 45-2). Consequently, no further
17 amendment could cure the deficiencies of Plaintiff's complaint with respect to the
18 April 22, 2006, incident. Lucas v. Dep't of Corrections, 66 F.3d 245, 248 (9th Cir.
19 1995).

20 Plaintiff now alleges a new incident described in Plaintiff's objections in which
21 Plaintiff contends that a corrections officer, Mr. Misiano, used an automatic door to
22 injure Plaintiff. See, e.g., Jan. 13, 2009 Objection at 4 of 6 & Exh. 1 (docket no. 43);
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1 Emergency Mot. at 2A, 3, 7, 8 (docket no. 46). Plaintiff states that the new incident
2 occurred on December 18, 2008, within the statute of limitations period. Unlike his
3 previous allegations, Plaintiff identifies the Defendant he asserts this claim against,
4 Mr. Misiano, and alleges that the Defendant violated his Eighth Amendment rights.
5 Additionally, on an Application to Proceed in Forma Pauperis, filed along with an
6 Affidavit (docket no. 47), Plaintiff lists the names of three Defendants, Connie
7 Kanehailua, Maggie Miller Stout, and Richard Morgan. The December 18, 2008,
8 incident and the names of these Defendants were not brought to the attention of
9 Magistrate Judge Tsuchida before he issued his R&R. Therefore, pursuant to Fed. R.
10 Civ. P. 72(b)(3), the Court RETURNS this matter to Magistrate Judge Tsuchida for
11 further consideration and to decide whether Plaintiff should be granted leave to amend
12 his complaint with respect to this new incident and these newly named Defendants.
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15 (2) Plaintiff's emergency motions to support his amended complaint (docket
16 nos. 37 & 39) and his motion for appointment of bilingual counsel (docket
17 no. 38) are DENIED; and
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20 (3) The Clerk of Court is directed to send copies of this Order to Plaintiff and to
21 Magistrate Judge Brian A. Tsuchida.
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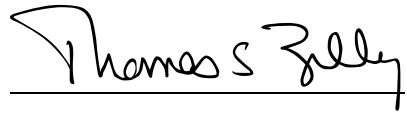
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1 IT IS SO ORDERED.

2 DATED this 25th day of February, 2008.

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6 Thomas S. Zilly
7 United States District Judge
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